S/32 **S.B. CIVIL WRIT PETITION NO.4839/2007**.
Devkishan Sharma Vs. State of Rajasthan & Ors.

Date of Order :: 19th December 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.N. Upadhayay, for the petitioner.
Mr. Rameshwar Dave, Dy.G.A., for the respondents.

Though listed for admission, at the request and with the consent of the learned counsel for the parties, and having regard to the facts and circumstances, this petition has been heard finally at this stage.

The petitioner, working on the post of Office Assistant with Municipal Board, Chittorgarh having been transferred to Municipal Board, Nimbahera by the order dated 31.07.2007 (Annex.1), has preferred this writ petition challenging the said transfer order particularly with the submissions that although holding the post of Office Assistant he has yet been transferred to Nimbahera vice Shri Ram Lal, an Upper Division Clerk; and that he would be required to discharge the duties of an Upper Division Clerk (UDC) at Nimbahera whereas the said post of UDC is lower in rank to that of Office Assistant.

By filing an additional affidavit on 29.08.2007, the petitioner has pointed out that of course he has been relieved by the Municipal Board, Chittorgarh and though he has not been able to report for duty at Municipal Board, Nimbahera due to illness but even on his reporting, question would arise

about his post because Shri Ram Lal has not been relieved from Nimbahera. Then, the petitioner has placed on record a copy of the messages exchanged between the Officers of the two Municipal Boards at Chittorgarh and Nimbahera as Annexure-3, making out that the said Board at Nimbahera is having only one post of Office Assistant and one Sardar Mal Modi is working on the said post.

The respondents have of course filed reply to the writ petition, have taken objection about availability of alternative remedy of appeal, have urged on the limited scope of interference in the writ jurisdiction, and have also suggested that there will not be any adverse effect on the seniority and salary etc. nor would the petitioner be required to discharge duties other than that of Office Assistant; however, the respondents have not filed any reply to the additional affidavit filed by the petitioner as referred hereinabove, particularly in relation to the fact that only one post of Office Assistant is available at Municipal Board, Nimbahera and another incumbent is already occupying the said post.

The petitioner has further pointed out by filing another additional affidavit on 08.12.2007 that the Municipal Board, Chittorgarh has clarified the position now that Shri Ram Lal was transferred to the vacant post of UDC at Chittorgarh and that the post of Office Assistant held by the petitioner at

Municipal Board, Chittorgarh is still lying vacant.

On being questioned about the factual aspect as stated in the additional affidavits filed by the petitioner, learned Deputy Government Advocate could not dispute the position that there is available only one post of Office Assistant at Municipal Board, Nimbahera; and that another incumbent Sardar Mal Modi already occupies the said post.

Having heard learned counsel for the parties and having examined the material placed on record, this Court is clearly of opinion that the transfer order as made by the respondents in this case, particularly in relation to the petitioner, cannot be sustained.

The petitioner admittedly holds the post of Office Assistant. If necessary, the petitioner could be transferred to any other place but on the same post or on a post equivalent thereto; and in any case, the petitioner cannot be transferred in any manner that results in reduction of his rank and status. A comprehensive look at the impugned transfer order makes out that the petitioner, an Office Assistant, has been transferred from Municipal Board, Chittorgarh to Municipal Board, Nimbahera, and simultaneously, one Ram Lal Bairwa, an Upper Division Clerk, has been transferred from Nimbahera to Chittorgarh. However, when there is available only post of Office Assistant at Nimbahera and another incumbent holds

the same, the petitioner obviously cannot join thereat. Other incumbent Ram Lal has of course been transferred from Nimbahera to Chittorgarh, and he has joined at Chittorgarh as stated in the certificate dated 07.12.2007 issued by the Municipal Board, Chittorgarh, but he has joined as and on the post of UDC. It is further borne out that the post of Office Assistant at Chittorgarh, held by the petitioner at the time of issuance of the impugned transfer order continues to remain vacant. It seems that the respondents have not taken care to examine the vacancy status at the relevant places with reference to the relevant posts before issuing the impugned transfer order. In any case, the said transfer order in relation to the petitioner that is likely to bring about the position of reduction in his rank and status, being not in conformity with the statutory requirements, cannot be sustained.

So far the objection regarding availability of alternative remedy is concerned, true it is that the petitioner could have challenged his transfer order by filing an appeal before the Rajasthan Civil Services Appellate Tribunal but then, availability of an alternative remedy cannot be treated to be of absolute bar for maintaining a writ petition. Moreover, in the present case, this Court issued notices as back as on 13.08.2007 and the respondents have filed reply. Then, from the additional affidavits filed thereafter, it is evident that the

petitioner in any case cannot join at Nimbahera on the post of Office Assistant for the reason that no such post of Office Assistant is vacant at Nimbahera. In the over all facts and circumstances, there appears no reason to relegate the petitioner to the alternative remedy of appeal in this case and, instead, it appears appropriate and in the interest of justice that the impugned transfer order qua the petitioner be quashed, of course while leaving it open for the respondents to pass appropriate order for his transfer/posting, if so required in the administrative exigencies, strictly in accordance with law.

As a result of the discussion aforesaid, this writ petition succeeds and is allowed to the extent indicated above. The impugned transfer order dated 31.07.2007 (Annex.1) in relation to the petitioner is quashed; and the petitioner shall be permitted to continue as Office Assistant at Municipal Board, Chittorgarh. It is, of course, made clear that this order shall not be of any impediment for the respondents in making/issuing any other order of transfer/posting of the petitioner, if so required in the administrative exigencies, strictly in accordance with law.

In the circumstances of the case, parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

Mohan/